

examined on the part of the prosecution.—Mr. Poland, for the prosecution, proposed to give in evidence statements as to her state made by the deceased in the absence of the defendant. In support of his contention he cited Mr. Justice Stephen's works on the criminal law, *Palmer's Case* ('Russell on Crimes,' vol. 3, p. 352, 5th ed.), 'Phillips on Evidence' (vol. 1, p. 149, 10th ed.), and *Aveson v. Lord Kinnaird* (6 East, 188; 2 Smith, 286). The deceased had a belief on June 27, that she was in a dying state. Evidence was receivable not only of what she said at that time, but what she had previously said during her illness. All the statements as to her bodily condition and the cause of her suffering were evidence—not only what she said to her medical man about her illness, but to other witnesses, was admissible.—Mr. Gill and Mr. Ivory, for the defence, argued on the other side. What she said about the state of her feelings was admissible, but anything she said about another person or about the cause of her state ought to be excluded. Mr. Ivory cited *Regina v. Megson*, 9 C. & P. 418; *Regina v. Gutteridge*, 9 C. & P. 471; and *Regina v. Osborne*, 1 C. & M. 822.—Mr. Poland, in reply, contended that statements as to the cause of the symptoms could not be excluded. He did not desire any name to be mentioned, as it would not be evidence.

Mr. Justice Charles said Mr. Poland proposed to ask what the deceased said as to her bodily condition between June 23 and June 27, when she died. It was proposed to ask what she said with reference to her bodily condition and with reference to what had been done to her, and what she was suffering from. The learned judge had listened attentively to the arguments, and his judgment was that the evidence must be limited to the deceased's statements as to her bodily condition from time to time, and what she was suffering from must be limited to contemporaneous symptoms.

On September 25, the evidence was continued, and it was proved that when the deceased made the declaration on June 27, Dr. Crane asked her if she made it with the fear of death before her eyes, and she replied in the affirmative.—Mr. Poland submitted that this dying declaration was admissible in

evidence. He cited the case of *Regina v. Jenkins*, 38 Law J. Rep. M. C. 82; L. R. Cr. Cas. 187. He pointed out that every case must depend upon its own circumstances. The woman must have known that some person had done something serious to her. From June 18 she was confined to her bed, and she never again left it. She went on from bad to worse. She wanted the defendant to come and see her, but as he did not come, Dr. Crane was called in on June 22. From that time there was no rallying point. On that day, Dr. Fincham, a physician, was called in. She was led to believe that she was in a perilous position. The whole of the circumstances of the case must be taken into account. Some questions had been put on the part of the defence as to whether the deceased had not been led to believe that she might recover. It was part of the ordinary duty of medical men not to frighten a patient at a time when there was some chance of recovery. There was the further circumstance in the case that everybody about the woman believed that she was dying. She had conversations about the disposition of her property and the care of her child. All these matters were to be added together to aid the learned judge in forming a clear and definite opinion on the subject. Mr. Poland submitted that when the deceased made the statement she knew that death was impending.—Mr. Gill argued that the deceased's statement was not admissible, and asked the learned judge to apply to this case the observation of Mr. Justice Byles, that scrupulous and almost superstitious care must be exercised in the admission of dying declarations. The statement was made by the deceased, not of her own accord, but on the invitation of the doctor. The question was whether, when she made it, she was conscious that she was in a dying state and had a settled and hopeless expectation of impending death, and was, in fact, upon the point of death. In support of his argument he quoted the case of *Regina v. Osman*, 15 Cox C. C. 1, in which it was decided by Lord Justice Lush that the person making a dying declaration must have a settled and hopeless expectation of immediate death. The evidence all showed